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ART. I. — *The Elements of Morality, including Polity.*
By WILLIAM WHEWELL, D. D., Master of Trinity College, and Professor of Moral Philosophy in the University of Cambridge, Author of the History and the Philosophy of the Inductive Sciences. New York : Harper & Brothers. 1845. 2 vols. 16mo.

DR. WHEWELL has been for some years well known as a scientific writer of great learning, candor, and soundness. His Bridgewater Treatise was second to none in the series, and may be studied as a model by any one whose office it is to embody for the use of general readers the results of profound research and scholarship. But his reputation rests, and probably will rest, chiefly on his History and Philosophy of the Inductive Sciences, — works which cover with singular fidelity the entire ground which they profess to occupy, — the former with a perfectness of method and an accuracy of detail which leave little to be desired, — the latter with a patience, caution, precision, and blended clearness and depth of thought, which must command the respect and admiration of those who dissent from its doctrines. The work now before us fills the same place for the department of Ethics, which the first of the above-named works does for the Inductive Sciences. It is not a treatise on Moral *Philosophy*, but an appropriate basis for such a treatise, which we cannot but anticipate as forthcoming (though not explicitly announced) from the same hand. The object of this work is to present what we may term the *physiology* of morality,

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that is, an outline of the undoubted facts and phenomena connected with man's moral being, self-consciousness, and agency, and of the leading eras and aspects of the ethical history of the race. Or, as the author takes England for his station, constantly applies his principles to the public law and sentiment of England, and seems on many subjects to have stopped short himself at the point which they have reached, we might define this work to be an answer to the question, "Through what elements of human nature, through what processes of development and culture, are the conscience and the moral standard of an enlightened and virtuous English Churchman what they are"? This route of inquiry excludes, of course, the many metaphysical questions which properly belong to the department of ethics, such as the ultimate basis of moral obligation, the power of motives, the nature of the will, and the seat, laws, and limits of free agency; but it presents a clear and philosophical statement of the facts from which alone these questions can be answered. We propose to give an outline view of the ground thus covered by Dr. Whewell, with such remarks of our own as the work and the subject may suggest and our limits permit.

Man is made a moral being by his powers of observation, reflection, and reasoning, combined with his conscious free agency. He understands what he does, and he does what he prefers to do. Moreover, as actions lead to events by invariable laws, they are the legitimate subjects of rules. But moral rules, as they are designed to act upon the will, must, in order to be of any avail, be adjusted with reference to those motives or springs of action which immediately influence the will. The springs of action our author enumerates as follows: "The Appetites or Bodily Desires; the Affections; the Mental Desires; the Moral Sentiments; and the Reflex Sentiments," under which head he classes the desire of love or esteem from others, and the desire of our own approval, together with "all those Springs of Action which are designated by some compound of the world *Self*; as *Self-Admiration*, *Self-Love*." This last class seems to us redundant. We can trace no difference in *kind* between "the desire of superiority," enumerated among the mental desires, and that of popularity or fame, which is put among the reflex sentiments. We do not deny, indeed, that the love of fame is a *reflex* sentiment; but so is hunger, thirst,

avarice, each implying an external object of desire, the reflex action of which influences the will. And as for the class of sentiments designated by the compounds of *self*, these may all be resolved into different forms of self-consciousness ; and self-consciousness is an essential condition of every desire or sentiment, while *self-love*, in its largest sense, may be assumed as the connecting *formula* between every spring of action and the will. This entire class of sentiments might, then, better be distributed, according to their respective aims and ends, among the mental desires and the moral sentiments.

The various springs of action operate with different degrees of intensity upon different individuals. But reason is conceived of as the same in all persons, as to its decisions and results ; and the common reason of mankind leads to the establishment of such rules of action as shall confine the several springs of action to their just places in the economy of individual and social being. Moral rules exist of necessity ; for “ we cannot conceive man as man, without conceiving him as subject to rules, and making part of an order in which rules prevail.” Man does not create society, but is born for it and into it. Society is as essential an element of human nature, as reason or conscience. And there can be no society, unless it have for its basis rules, enacted by the common reason, which shall so circumscribe and balance the springs of action in each individual, as to leave certain essential objects of desire open to the attainment of all. Actions derive their value from their ends ; and a subordinate end derives its value from a higher end which it promotes. In assigning reasons for our rules of action, we pass successively from lower to higher ends, till we arrive at *the Supreme Good* as the ultimate end. This supreme good is rather the limit than the expression of our conceptions of the desirable. We cannot define it ; but in our rules of action, we constantly aim at it and approximate towards it. The supreme good implies a supreme rule of action, — the sum and archetype of all our approximate rules ; and with reference to the supreme rule we conceive of actions as *right* and *wrong*, — terms which are indefinable, and represent certain ultimate ideas that underlie all our moral self-consciousness and our reflection on moral subjects.

Moral rules, in prescribing what it is right for each person

to do, must take into account the objects of desire to which each person is entitled. They thus recognize *rights*, and impose corresponding *obligations*. There are certain fundamental rights which flow necessarily from the moral nature of man, and the conceptions of which are universal. These conceptions are the basis of public law. All law aims at their realization, but with greater or less success according to the existing degree of culture, or the historical circumstances, which may have favored or retarded the development of a particular class of rights. Thus laws, though based on immutable principles and universal ideas, may be partial, imperfect, and mutable, — indeed, must ever be in a transition state, as it is their office to embody the conceptions of rights in local and historical circumstances, which can never be the same in two different communities or two successive generations.

Our author enumerates as essential rights “the rights of personal security, the rights of property, the rights of contract, the rights of marriage, and the rights of government” ; and proceeds to trace the development of these several classes of rights in the Roman and the English law. We cannot follow him in this sketch, which is fair, accurate, concise, and comprehensive. He passes thence to the consideration of duties and virtues. Obligations relate to outward acts. So long as we invade no man’s rights, no man can justly make any farther claim upon us. Beyond this point, law cannot go. But the *obligation* to refrain from certain illegal actions imposes upon us the *duty* of refraining from such thoughts, desires, and purposes as might lead to these actions. The law, “Thou shalt not steal,” imposes the duty of not coveting ; the law, “Thou shalt not kill,” the duty of suppressing those angry, malicious, revengeful thoughts, of which murder is the ripened fruit. Moral precepts thus cover with prohibitions addressed to the minds of men the whole circuit of wrong actions which the law prohibits. But the prohibition of certain wrong desires and purposes implies the duty of cherishing the opposite desires and purposes. The mind cannot repose with satisfaction on a negative morality. The supreme law of human action must necessarily include the whole of our nature, so as to direct every faculty, power, and affection towards its proper object. The idea of perfect goodness is a universal idea,

and it embraces several distinct conceptions, corresponding to the several kinds of rights and obligations ; and each of these gives rise to a separate class of moral precepts, and asserts its supremacy over a distinct department of the thoughts, desires, and purposes. The moral conceptions, to which all others may be reduced or referred, are benevolence, justice, truth, purity, and order, which, considered as dispositions of mind, may be termed the cardinal virtues. From these conceptions are deduced the propositions which we term the fundamental principles of morality. Thus, " Each man is to have his own," is the principle of justice. To the principles corresponding to the five cardinal virtues our author adds the principle of *earnestness*, " The affections and intentions must not only be rightly directed, but energetic," and that of *moral purpose*, " Things are to be sought only as means to moral ends," — principles which express the intuitive conviction of every moral agent. The various forms and manifestations of character included in the *five* cardinal virtues, together with the opposite shades and degrees of vice, are drawn out with great perspicuity and accuracy of detail ; but there are no salient points which demand special notice, and our limits will not permit us to give even a hasty sketch of the discussion. We cannot, however, refrain from expressing our admiration of the symmetry between Dr. Whewell's classification of rights and his list of cardinal virtues. The term *cardinal virtues* has hitherto been an arbitrary term, applied, as the caprice of an individual author dictated, to the prominent traits of a good character, without reference to their susceptibility of a farther analysis or of identification with each other. But the classes of rights enumerated in this work grow out of the ultimate, elementary conditions of human well-being ; and, as virtue is necessarily based on human rights, and aims at their security and extension, it must therefore have a separate phasis, and ought to have a generic name, corresponding to each class of rights. Accordingly, the rights of personal security are protected by benevolence ; those of property by justice ; those of contract by truth ; those flowing from the marriage relation by purity, which prescribes the subjection of the lower parts of our nature to the higher ; those of government by order, which dictates obedience to laws, and the discharge of one's relative duties as a member of the body politic. To these

virtues the principle of *earnestness* gives intensity, energy, and progressive development, while that of *moral purpose* unites them in their highest office of enriching and ennobling the individual soul.

All duties imply the duty of cultivating them, that is, the duty of moral progress, which can never terminate on earth ; for, so long as we live, we “ have room to make ourselves better and wiser, to increase the warmth of our affections, to purify our hearts, to elevate our thoughts, to make ourselves more and more virtuous.” Transgressions not only arrest our moral progress, but are steps in a retrograde moral course. After transgression, our progress can be resumed only by repentance, amendment, and reformation ; nor can the moralist pronounce, without authority from a higher source, that even these can avert the consequences of sin, and restore the integrity of the moral nature. Conscience is the faculty by which we determine whether our dispositions or actions are right or wrong. Conscience (*con-science*) is *self-knowledge*. It implies the knowledge of our own moral condition, of the principles to which it is amenable, of the complexion which it bears as good or evil. It is at once *witness, law, and judge*. As *law*, however, it does not necessarily and in all points coincide with the supreme law. It represents the individual's degree of moral culture and stage of moral progress. Therefore, while he who acts against his conscience is always wrong, he who acts in conformity with his conscience is not necessarily right. He may not have educated his conscience, — he may have violated the duty of progress ; and in that case, conscientiousness is no excuse. Or he may have had imperfect opportunities of developing the ideas of right and duty ; in which case, whatever judgment we may pass upon the moral agent, his dispositions and conduct cannot be regarded with approbation by one whose conscience is more enlightened.

Compared with the supreme law, the most highly educated conscience is imperfect, and may sometimes render doubtful responses. Hence come what moralists have termed *cases of conscience*, to the discussion of several of which the author devotes one of his most ably written and interesting chapters. From this chapter, which we would gladly quote entire, we offer several extracts on subjects of immediate interest, on which well disposed people might range themselves on

different sides as to their judgments and conduct. Thus, we have heard good men assert the right of an anonymous author to maintain his *incognito*, even at the expense of literal truth, against intrusive questioners, who have no legal or moral right to know the fact. To such persons we would commend the following statement.

“The author of an anonymous work, who wishes to remain unknown as the author, but is suspected, is asked whether he wrote the work. To refuse to reply would be to acknowledge it. Such authors have held, that, in such a case, they may deny the authorship. They urge, that the Questioner has no right to know : that the Author has a Right to remain concealed, and has no means of doing so but by such a denial. But this defence is wrong. The author has no moral Right to remain concealed at the expense of telling a Lie : that is, it is not right in him thus to protect himself. But on the other hand, he is not bound to answer. Nor need he directly refuse to do so. He may evade the question, or turn off the subject. There is nothing to prevent his saying, ‘How can you ask such a question?’ or any thing of the like kind, which may remove the expectation of an answer. If he cannot secure his object in this or some similar way, it is to be recollected that he has drawn the inconvenience upon himself, by first writing an anonymous work, and then engaging in conversation on such terms, that he cannot escape answering questions about the authorship of the work. He has no Right, moral or other, to insist that these two employments may be pursued jointly without inconvenience. Familiar conversation is a play of reciprocal insight and reciprocal guidance of thought ; and such weapons a man may very rightly use, to guard his secret. But he may not assume that it must be guarded at any rate, by means right or wrong, by declarations true or false. On the other hand, he may seek, as widely as he chooses, for some turn of conversation by which he may baffle curiosity without violating truth. To discover such a turn is a matter of skill, self-command, and invention. If he fail and be detected, he may receive some vexation or inconvenience ; but if he succeed at the expense of truth, he receives a moral stain.” — Vol. i., pp. 280, 281.

We commend the following extract to the attention, both of lawyers who would be good and true men, and of those who doubt whether the profession of an advocate can be pursued without the sacrifice of integrity.

“Some Moralists have ranked with the cases in which Convention supersedes the general rule of truth, an Advocate asserting

the justice, or his belief in the justice, of his Client's cause. As a reason why he may do this, though he believe otherwise, it is said that no promise to speak the truth was given, or supposed to be given. But we reply by asking, If there is no mutual understanding that he shall speak truly, to what purpose does he speak, or to what purpose do the judges hear?

"By those who contend for such indulgence to Advocates, it is alleged, that the Profession of Advocate exists as an instrument for the administration of Justice in the Community; and that it is a necessary maxim of the Advocate's Profession, that he is to do all that can be done for his Client. It is urged, that the application of Laws is a matter of great complexity and difficulty: that the right administration of them in doubtful cases is best provided for, if the arguments on each side be urged with the utmost force, and if the Judge alone decide which side is in the right; that, for this purpose, each Advocate must urge all the arguments he can devise, and must enforce them with all the skill he can command. It is added, to justify the Advocate, that, being the Advocate, he is not the Judge;—that it is not his office to determine on which side Justice is; and that therefore his duty, in his office, is not affected by his belief on this subject.

"In reply to these considerations, the Moralist may grant that it is likely to answer the ends of Justice in a community, that there should exist a Profession of Advocates, ready to urge, with full force, the arguments on each side in doubtful cases. And if the Advocate, in his mode of pleading and exercising his profession, allows it to be understood that this is all that he undertakes to do, he does not transgress his Duties of Truth and Justice, even in pleading for a bad cause; since, even for a bad cause, there may be arguments, and even good arguments. But if, in pleading, he assert his belief that his cause is just, when he believes it unjust, he offends against Truth; as any other man would do who, in like manner, made a like assertion. Nor is it conducive to the ends of justice, that every man, however palpably unjust his cause be, should have such support to it.

"To the argument, that the Advocate is not the Judge, and therefore that he is not responsible for his judgment on the merits of the case, the Moralist will reply, that every man is, in an unofficial sense, by being a moral agent a Judge of right and wrong, and an Advocate of what is right; and is, so far, bound to be just in his judgments, and sincere in his exhortations. This general character of a moral agent he cannot put off, by putting on any professional character. Every man, when he advocates a case in which morality is concerned, has an influence upon his hearers, which arises from the belief that he shares the moral

sentiments of all mankind. This influence of his supposed morality is one of his possessions ; which, like all his possessions, he is bound to use for moral ends. If he mix up his character as an Advocate with his character as a Moral Agent, using his moral influence for the Advocate's purpose, he acts immorally. He makes the Moral Rule subordinate to the Professional Rule. He sells to his Client, not only his skill and learning, but himself. He makes it the Supreme Object of his life to be, not a good man, but a successful Lawyer.

"If it be alleged, that, by allowing the difference of his professional and unprofessional character to be seen in his pleading, the Advocate will lose his influence with his hearers ; the Moral-ist will reply, that he ought not to have an influence which arises from a false representation of himself ; and that, if he employ the influence of his unprofessional character, he is bound, in the use of it, to unprofessional Rules of Duty.

"The Advocate must look upon his Profession, like every other endowment and possession, as an Instrument, which he must use for the purposes of Morality. To act rightly is his proper object : to succeed as an Advocate is a proper object, only so far as it is consistent with the former. To cultivate his Moral being is his highest end ; to cultivate his Professional eminence is a subordinate aim.

"But further ; not only is the Advocate to cultivate and practise his profession in subordination to moral ends, and to reject its Rules where they are inconsistent with this subordination ; but moreover, there belong to him moral ends which regard his Profession ; namely, to make it an Institution fitted to promote Morality. He must seek so to shape its Rules, and so to alter them if need be, that they shall be subservient to the Rules of Duty. To raise and purify the character of the Advocate's profession, so that it may answer the ends of justice, without requiring insincerity in the Advocate, is a proper aim for a good man who is a Lawyer ; — a purpose on which he may well and worthily employ his efforts and his influence." — Vol. 1., pp. 282 — 285.

The lamentable carelessness and levity with which otherwise conscientious men and women often treat the preliminaries to the marriage contract, the rashness with which the most sacred of promises is frequently made, the breach of that promise in multiplied instances because it ought never to have been made, attach a deep solemnity of interest to the passages which follow.

"Promises of Marriage often give rise to doubts and fears ; for

the Promise implies much ; — no less than affection and general community of interests during a whole life. A person may well hesitate before giving such a promise, and having given it, may fear whether he is not engaging for more than he can perform. But on the other hand, the Promise, sincerely given, leads to its own fulfilment ; for affection grows, in virtue of the confidence which such an engagement establishes between the parties ; the marriage union adds new ties to those which drew them together ; and the progress of a well conducted married life makes conjugal affection continue as a habit.

“ But the intention of fulfilling the engagement in this sense, and the belief of a power to do so, can alone render it right to make the Promise. A Promise of Marriage, though made, cannot morally be carried into effect by him who does not intend thus to perform the engagement, or who despairs of doing so. If, before the Marriage takes place, he find the germ of conjugal affection wanting in his heart, the course of Duty is, to withdraw from entering upon the immoral condition of a mere external conjugal union. But still, in doing this, he violates a most serious Relative Duty to the person thus deceived. She may have to accuse him of no less an injury than the blighted hopes and ruined happiness of her whole life. To a man of any moral feeling, or even of any natural feeling, the remorse of having done such a wrong, by the promise of affection and livelong companionship, must be intense. And his shame also must be profound : for he may be supposed to have well examined his heart before he made the promise ; and if his affections be so dark to himself, or so fickle, that, in spite of his self-examination, he has remained so long in error, and has been led to such a false step at last ; how can he hope ever to be justified in making a like engagement with another person ? A life of remorse and shame would be the proper sequel to such a fault.

“ Without there being an absolute Promise of Marriage, there are often manifest suggestions of such a common purpose, between man and woman, which lead to difficulties of the same kind. In all countries, and especially in countries in which men and women are left free, in a great measure, to choose for themselves their partners in married life, marriage is the great event of life ; it is the point to which the thoughts and imaginations, the hopes and designs, of the young of both sexes, constantly tend. This is still more particularly the case with women ; inasmuch as their social position depends mainly upon that of the husband. Hence, the manner and behaviour of young men and young women have a frequent reference, tacit or open, to the possibility

of engagements of marriage among them. Conversation, of almost any kind, may disclose features of character and disposition, by which one heart may be drawn to another; and indications of such inclination may be given, in all degrees, from the slightest to the most marked. Among such a variety of elements, it may often be doubtful how far such marks of preference, on the one side and on the other, may be equivalent to an Offer of Marriage, or to an Engagement. Nor can any general Rule be laid down; for much must depend upon the conventions of society. But we may say, in general, that Morality requires of us a most serious and reverent estimate of the marriage state, and of the union of heart and community of moral purpose by which the parties ought to be drawn together. Any behaviour, therefore, which, while it appears to tend to such a purpose, is really frivolous and unmeaning, or prompted only by vanity, or love of amusement, is at variance with Duty. Such behaviour is a very unfit portion of a life which has our Moral Culture for its constant purpose; and which looks upon the prospect of marriage, and the tone of intercourse with women, as means to this end." — Vol. I., pp. 287 – 290.

Cases of necessity are next discussed, — cases in which one is prompted to violate common rules and duties under the pressure of extreme danger or fear, whether for himself or others. It is useless to lay down maxims of conduct for such cases; for the course which an individual will take under a sudden emergency will depend for the most part on his previous moral culture, — on the intensity of his regard for the class of duties which self-preservation or sympathy with the person endangered would tempt him to violate. But when under such circumstances an essentially immoral act is committed, the moral nature receives a severe shock, and the moral progress is for the moment suspended. Yet the shock may be transient, and the progress may be resumed with but brief interruption; for a temptation, which is not likely to recur, and which was yielded to in a paroxysm of dread, will probably do much less harm than a temptation to some transgression of far inferior magnitude, met and yielded to in the common course of the daily life. Sometimes the violation of common rules in a case of necessity is connected with signal self-devotion and self-sacrifice. It then becomes an *heroic* act, and may be attended with manifestations of character which will compel the admiration of the sternest moralist, while still, as it violates these general rules of mo-

rality, which cannot be regarded with excessive reverence, he is unable to present it for approval and imitation.

Ignorance and error are often deemed to render wrong actions excusable. The first question, however, is, whether the ignorance or the error was unavoidable, or whether it resulted from the neglect of the duty of self-culture, or from the lack of investigation or caution as to the case in hand. In the latter alternative, the wrong action deserves no less censure than if it had been committed with full consciousness of the wrong, though the blame attaches itself to antecedent steps rather than to the ultimate act. Unavoidable ignorance or error may exist either with reference to the external *facts* which furnish the occasion for the wrong action, or with reference to the supreme *law* of actions as applicable to the case in hand. Ignorance or mistake as to facts which we have not the means of knowing, even though it leads to deeds essentially wrong, can imply no personal guilt, nor can it do any injury to the moral nature. The man who purchases stolen goods, under circumstances not adapted to excite suspicion as to their ownership, incurs neither blame nor harm. But ignorance of the law of duty, however involuntary, if not blameworthy, still is not harmless. It implies a suspended or inverted moral culture; and the wrong acts which flow from such ignorance tend to cloud over the conceptions of right and duty, to deepen vicious tendencies of the moral nature, and to lead the individual farther and farther from that conformity to the supreme law in which consists the supreme good. Thus in the divine government we recognize the workings of those cardinal maxims of human jurisprudence, "*Ignorantia facti excusat; ignorantia juris non excusat.*"

Nations and communities, as well as individuals, have their own standards of right and wrong, more or less conformed to the supreme law; and these standards are generally progressive, as, with growing intelligence, moral conceptions gradually become clearer and clearer. We can conceive of no settled human society, without the distinct and well established conception of the general rights of person and property. Equally essential is the conception of the State, as legitimately sovereign and the guardian of individual rights. But the state may be invested with its supremacy and sacredness, before rights in general are distinctly defined and circum-

scribed ; and in that case the state will sanction many alleged rights founded on injustice. As the state advances in moral culture, it will perceive the arbitrary and wrongful origin of titles, distinctions, and immunities thus founded, and will aim gradually to remedy the inequalities established by ancient prescription and usage. But it cannot do this suddenly, or except stepwise and by prospective legislation ; for what was arbitrary at the outset may have become relatively right by the historical sanction of long consent and habit ; and the hasty reversion of historical precedents, the righting, in paroxysms of strong moral feeling, of wrongs established by immemorial prescription, would break up the continuity of a state, destroy its identity, unhinge the confidence of its citizens, and unsettle the mutual understandings on which they had been wont to base their contracts and their enterprises. Law, therefore, in a well constituted community, will always, in its progress, keep somewhat in the rear of the national conception of justice. “ Law, who must constantly travel on towards justice, must always have some part of her journey yet to perform.” But on this intervening ground some crushingly hard individual cases may arise, — cases for which the law in its present condition provides no remedy, but which the sense of justice in the community will not suffer to remain unremedied. This space is covered by *equity jurisdiction*, which exists in some form in every enlightened community, and which always marks the next steps which law will take in its progress onward towards the supreme rule of right. As man's moral nature develops itself in the lapse of time, the conception of humanity, as a principle requiring each individual to own in others the same rights which he claims for himself, acquires definiteness, consistency, and universality. Humanity points constantly to an equality of civil rights, and thus to the emancipation and enfranchisement of whatever classes of men, as serfs or slaves, may have been interdicted from the free exercise of some or all of these rights. The laws of a state, with their retributive sanctions, are among the chief means of establishing, and may be highly instrumental in elevating, the national standard of morality. It is not their only function to command or forbid express acts ; but they perform a most important part in the moral education of the people. They impress certain characteristics of good and of evil on the acts which they

command, permit, and forbid. By their scale of punishments, they graduate the guilt of different crimes, and thus affect the relative estimate in which different vices and their opposite virtues are held by the great body of the people, who never become criminally amenable to the laws. This teaching of the laws combines with the moral education which children receive from their parents and instructors, and with that which results from the self-culture of individuals more advanced in life ; so that laws which there is seldom occasion to execute may exert an incalculable influence in creating and sustaining the state of general sentiment which makes them seem otiant and superfluous.

We would here pause and ask, whether this last consideration has the weight which it deserves in the proceedings of legislative bodies, and in the discussions designed to influence them. Humane and philanthropic reformers are constantly demanding a mitigation of legal penalties, on the plea, that such mitigation, especially if the administration of justice be rendered sure and prompt, will still leave punishments sufficiently severe to exercise a salutary restraint upon evil-doers. They maintain a perpetual protest against punishments more severe than are absolutely necessary for the prevention of crime. We agree with them that punishments should be limited by this essential end. But it is not the vicious portion of the community that is chiefly affected by them. Depraved men are too much under the influence of their passions, to calculate coolly the chances or the degrees of penalty which they are going to incur. Most great crimes are committed under the impulse of overmastering desires or enmities, which render the malefactor reckless of consequences. The prevention of crime is an end much more likely to be attained among those who have their characters yet to form, and who will grow into the tone of feeling which pervades the statute book. When in England the killing of a man might be atoned for by a fine, while the knocking down of a deer by an unqualified person was a capital offence, multitudes of youth grew up with a much more sacred reverence for the royal forests than for human life, and the stain of "blood-guiltiness" was regarded by the whole community as slight and transient. In our own country, fraudulent bankruptcy and some of the more genteel forms of swindling are looked upon with a leniency of judgment which is train-

ing young men in all our commereial cities for lives of dishonesty ; and this mainly because the law has failed to set its penal brand of reprobation upon these practices. On the other hand, there are forms of impurity and unnatural vice, that used to be unblushingly practised and gloried in before the Christian era, but which have almost died out of Christendom, not because few reach the depth of depravity which renders these crimes possible, but because the severest penalties stand written against them in the statute books of every civilized nation. The judicious philanthropist will wish not for mild, but for just punishments. He will desire to see the moral scale as distinctly recognized in the penalties which society inflicts on the guilty, as it is in the instructions of the Christian family or pulpit ; and will be contented that those crimes which imply an abnegation of common humanity should be visited (whether by death or by hopeless imprisonment) with the perpetual excision of the offending member from the body politic.

It was conclusively shown in our January number, that capital punishment is neither necessary for the prevention of the last steps of crime, nor effectual in the prevention of the crimes to which it is attached. The question remains, whether it may not be needed for the moral education of the community at large, in order to sustain a general and profound sense of the sacredness of human life, and of that purity in the weaker sex, which is to be regarded as dearer than life. And we say unhesitatingly, that, if imprisonment nominally for life is to continue what it now is in our country, a brief restraint, almost sure to be terminated by the irresponsible and ill-judged clemency of the executive, or, yet worse, to be bought off by money or by votes, we cannot afford to have the death-penalty removed. This sham imprisonment does not brand with sufficient ignominy those outrageous crimes which ought to be held in universal detestation. But could certain classes of criminals be made civilly dead, beyond the possibility of restoration except by new evidence casting doubt upon their guilt, we will then grant that the community may give added sanction to the sacredness of human life by forbidding its violation even by the stern hand of public justice.

But to return to our author. We have followed him so far as morality can go without new light and added sanctions

from a higher source of authority. Man's intuitive moral conceptions cannot but identify duty with happiness. But the connection is often apparently interrupted, and at best but dimly traced. Expediency and right often seem to point to divergent paths ; and the temptation is strong, and frequently irresistible, to pursue happiness in opposition to the dictates of moral principle. Here morality seeks the aid of religion. The idea of God becomes unfolded and fixed, in the course of man's intellectual and moral progress. The evidences of design in the outward creation, the structure and powers of the human soul lead irresistibly to the belief of a supreme First Cause. The harmonious course of nature points to an unceasing Providence. The creature cannot but feel himself the subject, and thus learns to regard the moral law, as enacted by the universal Creator and Governor. The system and course of nature also abound with traces of a benevolent purpose, and indicate the happiness of his creatures as the will of the Creator. Here, then, is found the desired thread that connects duty and happiness. If the moral law is the law of God, it must be a law of supreme benevolence, and obedience to it cannot fail in every instance to promote human happiness ; and if this end cannot always be traced in the present life, there are numerous analogies that point to a future state of being in which it may be fully attained.

These ideas of natural religion, when established, prepare the way for the reception of revealed religion ; and in the history of the world we find a series of well authenticated revelations, of which the central, or rather the culminating, point is the advent of Jesus Christ. His teachings expound the supreme law of duty, sanction it by promises extending into the boundless future, establish the identity of duty and happiness, and prescribe new means and offer new aids for man's moral progress. Taking the divine origin of Christianity for granted, Dr. Whewell brings together the precepts of our Saviour and his Apostles with reference to the several classes of duties previously discussed ; and the chapters devoted to this synopsis consist of the express words of Scripture, with only here and there a connecting or explanatory sentence.

But religion not only sanctions the obligations of natural morality ; it prescribes a new class of duties, of which God is the object and the centre, — duties of reverence,

worship, praise, and prayer. Nay, more, it makes God the object of all other duties, and prescribes their performance as an essential portion of the homage which we owe to him. As religious truth is simply an outline of the actual relations of moral beings to each other and their Creator, of course religious belief is essential to the full moral culture of each individual, and without it, he must omit the discharge of many positive and essential duties. To religious unbelief or error, then, are applicable the same principles which were laid down as to ignorance or error with regard to the moral law. Unbelief, in consequence of the lack of suitable religious teaching, is a misfortune as regards the moral nature, arresting its progress at a very low point, if not inverting it; while unbelief, with ample means of ascertaining the truth, is necessarily blameworthy. Religious belief being thus essential to man's moral progress and well-being, there results the duty of *Christian edification*, or mutual religious improvement, which suggests a system of social means for the acknowledgment, the preservation, and the diffusion of religious truth, for the initiation of the young and ignorant, and for the embodiment of Christian ideas in men's social relations and intercourse. That these supremely important ends may be adequately answered, they must not be left to the random and fickle impulses of irresponsible individuals; but they demand an *established system of means*. Such means are Christian ordinances. Our author enumerates four sources of rules for Christian ordinances; namely, Natural Piety, Early Revelation, Apostolic Institution, and Catholic Tradition.

These sources we readily admit, with a qualification, to which he would undoubtedly assent, by which we would assign to early revelation and Catholic tradition the mere office of interpreting and authenticating apostolic institution. Thus, for instance, we would defend *infant baptism*, not on the mere ground that the circumcision of infants was practised under the Jewish revelation, and that the baptism of infants comes down to us sanctioned by the unvarying practice of the early church, but because these facts render it morally certain that infants were included in the apostolic institution. In addition to these sources, the right is claimed for each national church of regulating the forms and details of ordinances, where they are not specially prescribed, — a right which none will question where a national church exists.

Under the head of Christian ordinances, Dr. Whewell treats of the Lord's day, the consecration of places of worship, forms of prayer, baptism, the Lord's Supper, marriage and funeral rites, oaths, and the Christian ministry. As a member of the Church of England, he of course decides in favor of forms of public prayer, though he has reinforced the exceedingly jejune argument from authority by few of those obvious collateral considerations, on which, in the absence of express command or institution, the stress of the discussion ought to rest, and on which it is no difficult task to defend the expediency of an established liturgy. He also defends the distinction of orders in the ministry, and the vesting of the exclusive right to ordination in the bishops ; but evidently takes ground with the Evangelical party (so called) in his own church, in that he says not a word of the apostolic succession, and denies the alleged priestly character and office of the Christian ministry.

We pass now to the chapters which treat of Polity. The state is defined to be "a necessary society," existing, "in the order of reasoning," before the individual, that is, involving conditions of being without which man could not live as man. The state, thus endowed with underived and inherent attributes, is represented not merely as the guaranty, but as the source, of individual rights, and as deriving its own rights not from any social contract or from cession by its individual members, but from an *a priori* necessity. The state, it is said, cannot be conceived of as divested of these rights ; and they are rights *sui generis*, such as can never in any sense or degree have belonged to individuals, — nay, some of them such as it would be grossly immoral for any individual or body of men, considered apart from that abstraction, *the State*, to claim and exercise. These rights (in addition to the general rights of government) are "the right to the national territory ; the right of war and peace ; the right of capital punishment ; and the right of imposing oaths." Corresponding to these rights are the obligations of self-preservation, of national defence, of upholding law, and repressing sedition.

Now we are constrained to regard this whole statement as a specimen of special pleading for certain established usages of states, which no recognized moral principles can justify. The author is sufficiently aware that individuals have no right to murder or to plunder their enemies ; he traces no

charter for such privileges either in natural morality or in revelation ; and in order to legitimate them for nations, he is driven to regard the state as a distinct, nondescript personality, devoid of human attributes and responsibility, half God, half devil. But admitting for a moment this vague abstraction, whence are we to infer its rights or its duties ? If it have rights not analogous to those of individuals, and over and above those included in man's intuitive conception of government and of social order, they are rights which cannot be brought to the forum of conscience, or tested by moral principle. How, then, shall it be ascertained that they are rights, and not mere facts ? They are legitimated solely by their existence ; for they are not necessary facts, — we can conceive of government and social order as existing independently of them. Are we not, then, on our author's ground, driven to the conclusion, that, in the constitution of the state, " whatever is, is *right*," and in earlier ages would not the same mode of reasoning have legitimated slavery, despotism, and the slaughter of women and children in time of war ?

The state, so far from being an *a priori* conception, is an after-growth of society, and may be traced historically from its origin through every stage of its progress. Government is indeed an essential condition of society, and the " virtues of order " are the dictates of natural morality. But in the earliest times, the functions of government were exercised by the father of each separate household, and then by the centre of regard and influence (whether on the score of age or character) in each larger family group. Under this simple organization, men acquired property, both movable and immovable, by individual acts of appropriation, while all was free and there was room for all, and by the proceeds of their own industry ; and this property was secured to the owners, not by virtue of an imagined lease from the family or tribe, or from its head, but by an intuitive sense of the distinction between *meum* and *tuum*, which induced every man to respect his neighbour's property, that his own might be respected in turn. As men's mutual transactions grew complicated, and as the collateral branches from the same common stock became too numerous and too widely separated to cherish equal regard for every individual patriarch or leader on merely personal grounds, some more stringent form of government became necessary ; and at this epoch men began to resign,

whether by express or tacit consent, such portions of their individual rights as were necessary for the mutual protection of the residue. There were certain relations and functions in which a community had to stand and act unitedly, if at all ; and the central authority, under whatever name, was endowed with powers requisite to occupy those relations and discharge those functions. This process took place in different ways, under the control of varying circumstances. Where there was a single individual of overmastering influence and character, he was enabled to avail himself of the exigencies of his associates, so as to usurp the powers that needed to be vested somewhere ; and thus was laid the foundation of the early despotisms. Where there were none or many possessed of these commanding traits, the general voice was more distinctly recognized in the organization of the state ; and the governments thus formed bore and transmitted strongly marked features of freedom. But in both cases, the acquiescence of the people must have been implied in the origin of the state.

In confirmation of the position, that landed property is not necessarily derived from the state, but may exist prior to the development of a state organization, we might appeal to the existing condition of things among the aborigines of New South Wales. Their tribes have no recognized chiefs ; but the only authority is that exercised by the fathers of separate families, and by the elders of each tribe, through the influence which age and wisdom may give. There is no central source of power, — no authorized and recognized headship or magistracy, — nothing that corresponds to the idea of a sovereign state with underived rights of its own. Yet we have assurance from various independent authorities of the existence of landed property among these people, under the guaranty of their intuitive sense of right. We quote the following from a recent work of Mr. Eyre, for twelve years a resident magistrate in the colony, and the enterprising explorer of a large portion of the Australian continent.

“ As far as my own observation has extended, I have found that particular districts, having a radius, perhaps, of from ten to twenty miles, or, in other cases, varying according to local circumstances, are considered generally as being the property and hunting-grounds of the tribes that frequent them. These districts are again parcelled out among the individual members of

the tribe. Every male has some portion of land of which he can point out the distinct boundaries. These properties are subdivided by a father among his own sons during his lifetime, and descend almost in hereditary succession. A man can dispose of, or barter, his land to others; but a female never inherits, nor has primogeniture among the sons any peculiar rights or advantages."

Here we have an instance in which property in land, even without occupancy for tillage or for permanent dwellings, is protected by the natural sense of right and order. Should these tribes become civilized, instead of being exterminated, we shall witness the growing up in the midst of each tribe, or group of tribes, of some central organization and seat of power, in which will become vested those protective rights and duties over individual property, which are now left to private good faith and mutual justice.

We would therefore elect "the social contract," as the formula that most nearly embodies the facts connected with the formation of organized governments. Not that a contract in express form was ever made between the members of an infant state; but in every instance, there must have been an implied mutual understanding tantamount to a contract. And in every instance, men yielded to the central authority certain supposed rights, which it was no longer possible for them to exercise personally without the violent and prolonged disturbance of social order. These supposed rights corresponded to their degree of moral culture. Certain rights (that of *way*, for instance) over other men's estates had become necessary for the use and enjoyment of one's own estate; and these were necessarily yielded to the government, in which they will always remain vested, to prevent undue encroachment and unceasing litigation. The right of war was also yielded to the state, not as a matter of divine and necessary right; but because wild, rude men had at first conducted their own quarrels with the arms which nature gave, but could do so no longer, on account of the multitude of confederates that could be readily enlisted on either side. The right of capital punishment was in like manner yielded to the state, because men had from the first exercised the right of private retaliation, even to blood for blood; but such practices could no longer be continued, without doing perpetual violence to the growing sense of justice and order. In process of time, the right of imposing oaths became vested in the state

(where it belongs, if anywhere), because, from the legitimate or factitious sanctity attached to this ceremony, it was possible for private combinations of men, united by extra-legal oaths, to disturb or outrage the public tranquillity.

According to the view which we have now presented, a state is to be regarded as a body of individuals so combined under the essential principles of social order, and by an organization based upon those principles, as to constitute a political unit, and to act as such for the joint protection of individual rights, and for the maintenance of suitable relations with other political units. The state, then, can have no rights which the people cannot give; nor can it have a moral code exclusively its own. Political organization cannot make wrong right, or evil good. Men cannot do guiltlessly, in their corporate capacity, deeds which they are forbidden to do singly. The *existing rights* of a state will, indeed, be determined by the degree of moral culture to which the people have attained; but its *real* rights must needs be commensurate with the supreme rule of right.

Let us now look separately at the rights claimed for the state by our author. The first is a right to the national territory. It is alleged, that individuals derive their rights to special property in land from the state. We have shown, however, that individual property in land existed prior to any distinct political organization. The state, indeed, regulates the descent and alienation of national property; but it does this in such a way as to perfect, not to invade, individual rights. If men wish to sell or bequeath their lands, the state prescribes forms by which the will of the seller or testator can take effect without the suspicion of mistake or fraud; and with reference to the landed property of intestates, it simply carries out the prevalent idea of rightful descent. A state which should depart from this course, and enact laws which obstructed the right of transfer or bequest, or impeded the mode of natural descent most in accordance with the ideas of the nation, would be regarded as chargeable with the most arrant despotism, even though important public ends were the alleged plea; but such laws would be within the legitimate scope of a state which had a right to the national territory. The state, indeed, appropriates the land of individuals for public uses; but this is a power requisite for the perfecting of individual rights; for what would private

property be worth, without means of intercommunication adapted to the condition and the direction of business and markets ? But in these cases, the sacredness of private property is recognized both by the imminent necessity, which is held to be the only justifying cause for a procedure seemingly arbitrary, and by the full remuneration tendered for the property taken. In no nation that has made any sensible advancement in civilization would a government dare to perform any acts that implied public ownership of the whole country ; and we feel constrained to regard such ownership as an unauthorized figment.

The right of war comes next on the list. This right will undoubtedly be claimed and exercised, so long as Christian nations rest in their present imperfect degree of moral culture. But if, by the supreme law of duty, individuals are bound to love their enemies, and to overcome evil with good, we are unable to perceive how they can be authorized in their corporate capacity to hate their enemies, and to overcome evil by inflicting greater evil. In war, states command, compel, individuals to commit the very acts which are forbidden to individuals by the moral law. They constrain their subjects to become thieves and murderers. It is said, indeed, that there is no tribunal before which nations can plead their rights and prosecute their claims. There is indeed none ; but can we not conceive of such a tribunal, created by the joint consent of nations recognizing the same moral standard, and its decisions enforced by a public opinion pervading those nations to such a degree as to render them inviolable ? Or, without such a tribunal, may not the progress of moral sentiment render arbitration the established mode of settling national disputes, especially as in the same progress the conduct of nations will be marked by a uniform reference to justice and good faith, so as to render the differences between them few, slight, and easy of adjustment ?

But what is to be done in case of a wanton invasion of the territory of a nation that has committed no aggressive act and sanctioned no aggressive measure ? We might fairly doubt the possibility of such an event. But supposing it to take place, and supposing the invading army to be forcibly repelled, still the seeming necessity of such a measure does not settle the question of abstract right. The case is a case of necessity, corresponding to those cases in which an indi-

vidual is constrained to kill another to save his own life. The nation invaded may not have attained a sufficient degree of moral culture to submit to quiet martyrdom, — to suffer all wrong rather than do wrong ; and the violent acts by which the invasion is repelled would be regarded by the moralist with great leniency. Yet still they would produce the reflex consequences that were enumerated as flowing from the violation of ordinary moral rules in cases of individual necessity. The national morality would receive a violent shock. The moral progress of the nation would be arrested and inverted. The laws of private duty would be outraged in multitudes of instances, and for a series of years. Idleness and profligacy would make rapid inroads ; the sanctions of religion would be weakened ; and the nation, when restored to tranquillity, would demand an intense and prolonged concentration of its energies to repair the moral waste and desolation that had followed in the train of war. Such consequences have confessedly flowed from the most righteous wars. The demoralizing effects of the war of our Revolution lasted for more than one generation, and were most intensely felt and most deeply deplored by many of those whose sense of duty made them prominent in its counsels and transactions. But if war must, in the course of Providence, be uniformly attended with these calamitous results, though we may admit that it is sometimes necessary in the existing condition of moral sentiment, and though we yield to none in the honor which we would render to those who, believing in its necessity, engage in it from purely patriotic motives, we cannot defend it as in accordance with the supreme rule of right.

We would apply similar principles to the alleged right of capital punishment. The death of another may be the incidental, undesigned result of the lawful measures by which an individual prosecutes his own rights ; and in that case the manslayer is undoubtedly guiltless. In like manner, death may sometimes be the incidental, undesigned result of the lawful measures of a government in protecting the rights of its citizens. For government must needs be possessed of sufficient physical force to serve as a last resort in the execution of its laws, and in the restraint of malefactors ; and physical force must have for its basis the possibility of violent death to him who resists it ; — otherwise a desperate individual might keep a whole nation at bay. But if a person

thus loses his life, there is no need, in order to justify the state, to claim for it the right of disobeying the law, “Thou shalt not kill”; for in this case the state does not mean to kill, — nay, does not kill; the contumacious member rushes with suicidal madness against the public sword, and “his blood is upon his own head.” A condition of things is also supposable, in which, from the difficulty of keeping the most dangerous subjects in perpetual restraint, or from the impossibility of preventing certain classes of crimes by a less fearful penalty, a state might deem itself constrained to annex capital punishment to these crimes. In this case, while we might not condemn capital punishment, we could not defend it on the ground of abstract right; but should regard it as a case of necessity. And we should expect to trace in every instance in which capital punishment was thus inflicted, in a larger or narrower circle, the consequences resulting from the suspension of moral rules in cases of necessity. In point of fact, such consequences are to be invariably traced in connection with the gallows. Whatever effect the execution of a criminal may have upon the community at large, it is always morally calamitous in its immediate vicinity, outraging the moral sensibility of many, letting loose the fiercest and vilest passions of many more, and often succeeded by anomalous and unaccountable instances of violence and suicide, that are to be referred to no other cause. For these reasons, and in the absence of any principle of natural morality or any divine command conveying such a right, we should be slow in giving the right of capital punishment a place among the absolute rights of the state.

We pass over the remaining right, of imposing oaths, and come to the subsequent chapters of the work, which present a summary view of the progress of government, and of the history of the Roman and the English constitution. The chief *desideratum* in a government is the union of the two elements of order and freedom in such proportions, that each member of the state shall have the largest liberty consistent with the rights of others. But, until this union is effected, order and freedom present themselves as opposite polarities, towards one of which the state gravitates, till it is repelled towards the other. These oscillations are violent and convulsive in the infancy of states; but gradually become less and less so, with the growth of intelligence and of moral sentiment,

by which those who hold the reins of government become indoctrinated with principles of liberty, while the subject classes learn to revere order as an essential condition of the highest social good. In England, as we infer from the terms of unqualified approbation in which the English constitution is described, the oscillations have ceased, and order and freedom have leaped from their opposite poles into inseparable union. But before we admit this statement in full, we should like to learn the opinions of the manufacturing operatives, the poorer tenantry, and the colliers of England, and to collect the suffrages of Ireland.

The state, considered as a moral personality, not only has rights and obligations, but is also capable of virtue, and subject to positive laws of duty. The duties of the state are accordingly laid down, in correspondence with each of the cardinal virtues. The chapters devoted to this summary contain little that demands animadversion, and constitute for the most part a faultless and most admirable compend of political morality. But the duty of providing for the moral education of the people naturally suggests the subject of ecclesiastical establishments. Here the author examines cursorily, and rejects, the polity of indifference to religion on the part of government, that of protection extended to various sects, and that of ecclesiastico-secular supremacy; and of course makes the argument turn triumphantly in favor of an established national church. It would be idle for us to join issue with him on this point; for we can have no American readers who need to be convinced of the expediency and duty of affording equal protection to all forms of Christian belief, and all classes of conscientious worshippers. And were we writing for a Transatlantic public, we would simply ask leave to place side by side the ecclesiastical statistics of Great Britain and of the older American States, and would then submit the case without argument.

The closing book of the work before us treats of international law. It is brief and hurried. It barely marks out the ground covered by this designation, enumerates the points that have become settled by usage, prescription, and authority, and indicates the more numerous points still *sub lite*. The author enters into no discussion, gives no opinion of his own, and makes no reference to any absolute standard of right. This portion of the work, therefore, affords no

scope for comment ; and for a synopsis of it, we refer the reader to the table of contents, rather than extend our article by copying it.

In commencing the perusal of this work, our first emotion was that of disappointment. We felt that we were passing over ground as familiar to us as the alphabet, renewing discussions that had been settled long before our manhood, and at the same time gliding over, with hardly a reference to them, those deep questions which the logomachy of centuries still leaves unfathomed. But we have read the work through with growing gratitude to the author for the distinctness of his definitions, for the transparency of his statements, for his accuracy in the use of terms, and for the minuteness and thoroughness of his analysis of moral ideas and conceptions. He has given new clearness and definiteness to truths which we thought that we had fully apprehended before, has interpreted elements of self-consciousness which were vague and dim, and has embodied in appropriate and available forms of speech glimpses and glimmerings of thought which we could not have written down. He has furnished and strengthened us for the work that he has left undone ; and no one, who would gird himself for the investigation of the more difficult and complex portions of moral science, could fail to derive the highest benefit from his labors. Yet the work has some decided faults and repulsive features. It is often needlessly minute and tediously prolix. It abounds in repetitions. The same topic is frequently treated with but little variation of detail, under different heads, when a reference to a former chapter would have been sufficient. Condensation to two thirds of its present bulk would make the work much more readable, without any sacrifice of perspicuity, or the suppression of a single essential thought or statement.

We have said that Dr. Whewell generally stops short at the English point of moral progress. He seems perfectly satisfied with the present English standard of morality, government, and law. The chief deficiency of the work is, that, while it exhibits the great principles on which all the future moral attainments of the race must be based, there is nothing prospective in its details, — no graduated view of the successive steps yet to be taken, — no specification of rules by which its fundamental principles are to be yet more fully embodied and more perfectly realized. In the distinc-

tively Anglican tone and character of his book, the author has given us an undesigned commentary on one of his own favorite topics, — the agency of a state, through its institutions and laws, in the moral education of its subjects. He has illustrated the tendency of the great body of intelligent and virtuous fellow-citizens to move onward *pari passu* towards a higher moral standard. He has shown us how difficult it is, even for a highly enlightened and devout mind, to rise above the average tone of sentiment and feeling of those with whom his social and national sympathies are all bound up. We have thus been led to discern more clearly and to feel more deeply the obligation resting upon those who think that they have attained higher views and a more perfect standard, not to veil the light that is in them, but to make themselves the heaven-appointed leaders of their fellows to a loftier stage of moral progress and attainment.

In reading this book, we have often been reminded of the world-wide difference between the Englishman supremely satisfied with every thing that is English, and the American constantly finding fault with every thing that is American ; and our preference is most decidedly for the latter mood of mind. It results in part from the consciousness of power. The Englishman found his constitution ready made to his hands, and he could not hope to remodel it. Our constitution is still in the process of formation, its documentary provisions liable to change, its unwritten construction on many points still mooted ; and every citizen may have his voice in determining what it shall be, and how it shall be interpreted. Then, too, this fault-finding with our institutions corresponds with the healthful exercise of repentance for individual misdoings and shortcomings. It indicates an active sense of the possibility of something truer and better, and a latent but constant reference to the supreme standard of right. It is the spirit of progress. It is born of our political freedom ; and will give itself no rest, till it has attained the highest liberty under the most perfect supremacy of law.